

<b>IN RE: PETITIONS FOR SPECIAL EXCEPTION</b>	*	BEFORE THE
<b>AND SPECIAL HEARING</b>		
SE side of Philadelphia Road, 130 feet SW	*	DEPUTY ZONING
of the c/l of Rosedale Heights Avenue		
15 <sup>th</sup> Election District	*	COMMISSIONER
7 <sup>th</sup> Councilmanic District		
(7520 Pulaski Highway)	*	FOR BALTIMORE COUNTY
<b>SMO, Inc.</b>	*	
<i>Legal Owner</i>		
	*	
<b>B.M. Donuts, Inc.</b>	*	<b>CASE NO. 2009-0148-SPHX</b>
<i>Lessee</i>		

\* \* \* \* \*

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This matter comes before this Deputy Zoning Commissioner for consideration of Petitions for Special Hearing and Special Exception filed by the legal property owner, SMO, Inc., and the proposed lessee, B.M. Donuts, Inc. The Special Hearing was filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) to approve an existing fuel service station with ancillary convenience store as previously approved as shown on the 1971 site plan notwithstanding the addition of a proposed fast food restaurant by special exception. The Special Exception was filed in accordance with the criteria set forth in Section 502.1 of the B.C.Z.R. to permit a fast food restaurant (Dunkin Donuts) with a drive-through window and carry out in combination with an existing fuel service station. The subject property and requested relief are more fully described on the site plan that was marked and accepted into evidence as Petitioners' Exhibit 3.

Appearing at the requisite public hearing in support of the Special Hearing and Special Exception requests was Bill Grevey on behalf of the legal owner, SMO, Inc., Akash Patel on behalf of the proposed lessee, B.M. Donuts, Inc., and Shane Clark on behalf of the corporate

franchisor, Dunkin Brands, Inc. (hereinafter referred to collectively as “Petitioners”). Robert W. Taylor, Jr., Esquire appeared as attorney for Petitioners. Also appearing in support of the requested relief was Charles V. Main with McKee & Associates, Inc., the professional engineer who prepared the site plan. There were no Protestants or other interested persons in attendance at the hearing.

Testimony and evidence offered revealed that the subject property is rectangular-shaped and contains approximately 1.3912 acres, more or less, zoned B.L.-A.S., B.R.-A.S. and B.L. The B.L. and B.R. Zones denote Business, Local and Business, Roadside, respectively, and portions of the property are superimposed with the A.S. District overlay, which further refines the land use regulation to “automotive services.” The property is located on the north side of Pulaski Highway (U.S. Route 40) and is also bordered to the north by Philadelphia Road (MD Route 7), east of Interstate 95 near the Baltimore County/City line, in the Rosedale area of Baltimore County. The property is also adjacent to the Rosedale Industrial Park located immediately to the south. As shown on the site plan, the property is improved with an existing one-story building approximately 15 feet in height and 2,250 square feet in area, with existing fuel service pumps and a canopy cover and vehicle parking and stacking areas, and is presently utilized as a fuel service station with ancillary convenience store. The property was once part of a larger tract that was subdivided and is now two separate properties, with the second property located immediately to the east of the subject property.<sup>1</sup>

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<sup>1</sup> This eastern side of what was once a 2.3 acre tract (consisting of approximately 0.95 acre) was the location of a Wendy’s fast food restaurant a number of years ago. That property was owned by SMO Realty, LLC and after the restaurant closed, they along with the contract purchaser, Fitzgerald Electric through FEC Corporation, sought to utilize the property for a contractor’s storage yard. As reflected on the site plan, in Case No. 2005-0179-X, then-Deputy Zoning Commissioner John V. Murphy issued an Order dated December 2004 granting the request.

At this juncture, Petitioners desire to add a Dunkin Donuts fast food restaurant to the property in combination with the existing fuel service station. Petitioners submitted a Commercial Lease Agreement that was marked and accepted into evidence as Petitioners' Exhibit 1. This agreement dated October 28, 2008 is between SMO, Inc. and B.M. Donuts, Inc. for the use of approximately 800 square feet of space within the existing convenience store building for the Dunkin Donuts.

The fuel service station and ancillary convenience store was originally approved in 1971. Because of the addition of the new fast food restaurant use, the special hearing is requested to amend the previously approved site plan from 1971 to include the planned restaurant use. In addition, although the previous site plan met the then-applicable Regulations, the existing canopy does not meet some of today's setback requirements; hence the special hearing is also requested to approve the previously approved fuel service station and convenience store as nonconforming. It should be noted there are no changes proposed to the layout or configuration of the fuel pumps, parking, or to the existing convenience store building -- the only alteration is the addition to the interior of the building of a fast food restaurant with drive through window and carry out as a use in combination with the existing fuel service station and ancillary convenience store.

In addition, the special exception is requested to approve the planned fast food restaurant. Section 405 of the B.C.Z.R. governs fuel service stations generally; in particular, Section 405.6.A.3 of the B.C.Z.R. states that any of the "uses in combination with" fuel service stations listed in Section 405.4.E of the B.C.Z.R. may be added to any such station provided that a special exception is granted and the provisions of Section 405.4 are met. Moreover, Section 405.4.E.10 of the B.C.Z.R. specifically allows a fast food restaurant by special exception.

Called as a witness in support of the requested relief was Bill Grevey, Wholesale Area Manager in the Baltimore Region for SMO, Inc. Mr. Grevey indicated that SMO, Inc. acquired the subject property from Motiva, Inc. in 2000. The property was utilized at that time as a fuel service station and convenience store. As the current owner of the property, SMO, Inc. is supportive of the instant zoning requests in order to amend the previous plan and add the Dunkin Donuts fast food restaurant to the existing convenience store building.

Also testifying in support of the requested relief was Charles V. Main, the professional engineer with McKee & Associates, Inc. Mr. Main was offered and accepted as an expert in civil engineering, land use and development, and interpretation of the Baltimore County Zoning Regulations. A copy of his resume was also submitted and marked and accepted into evidence as Petitioners' Exhibit 2. Mr. Main referred to the previous site plan, which was attached to Petitioners' Exhibit 3, and indicated that the current plan agrees with the plan approved in 1971.

He reiterated that in 1971, the site plan was approved for a fuel service station and convenience store with the same layout and configuration as today, and that this would continue going forward. An aerial photograph of the property and a ground level photograph of the fuel pumps and convenience store were marked and accepted into evidence as Petitioners' Exhibits 4A and 4B, respectively. The only change in use would be the addition of the Dunkin Donuts, which would be internal to the building and would have no detrimental impacts to the site. The site would have sufficient parking, stacking spaces, and internal circulation, and would have the same access point as the previous plan approved by the Office of Planning and Zoning on May 24, 1971. Finally, Mr. Main offered his opinion that the proposed additional fast food restaurant use would not be detrimental to the health, safety, or general welfare of the locale, and would not

have any negative impacts on the special exception criteria set forth in Section 502.1 of the B.C.Z.R.

The Zoning Advisory Committee (ZAC) comments were received and are contained within the case file. Comments were received from the Department of Environmental Protection and Resource Management dated January 20, 2009 which indicate that the property must comply with the Forest Conservation Regulations. Comments were received from the State Highway Administration (SHA) dated December 23, 2008 which indicate that a field inspection and internal review reveals that existing access points onto U.S. Route 40 (Pulaski Highway) must be upgraded to be compliant with current State Highway Administration guidelines. SHA also indicates that as a condition of approval for the proposed Dunkin Donuts at the subject location, that Petitioners must contact the SHA in order to obtain an entrance permit.

Turning first to the Special Exception request, I am persuaded to grant this relief to permit a fast food restaurant at this location in combination with the existing fuel service station. The evidence indicates that the proposed restaurant with drive through window and carry out would not be detrimental to the health, safety, or general welfare of the locale, would not overcrowd the land, is consistent with the property's Zoning classification, and would not negatively impact any of the other criteria set forth in Section 502.1 of the B.C.Z.R. The area of the special exception use will be internal to the existing convenience store building and there appears to be sufficient parking, stacking spaces for the gas pumps, and internal circulation for customers utilizing the fuel service, convenience store, and/or the proposed fast food restaurant.

Turning now to the petition for Special Hearing, I shall grant this relief as well. The request for the amendment to the previous 1971 plan naturally flows from the granting of the aforementioned special exception. In addition, I shall approve the existing layout and

configuration of the property, including the existing improvements, as nonconforming. These improvements were in conformance with the Regulations when approved in 1971 and shall be permitted to continue.

Pursuant to the advertisement, posting of the property, and public hearing on these Petitions held, and after considering the testimony and evidence offered by Petitioners, I find that Petitioners' requests for special exception and special hearing should be granted.

THEREFORE, IT IS ORDERED this 9<sup>th</sup> day of March, 2009 by the Deputy Zoning Commissioner, that Petitioner's request for Special Hearing filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) to approve an existing fuel service station with ancillary convenience store as previously approved as shown on the 1971 site plan notwithstanding the addition of the proposed fast food restaurant by special exception be and is hereby GRANTED; and

IT IS FURTHER ORDERED that the Special Exception request pursuant to Section 405.4.E.10 of the B.C.Z.R. to permit a fast food restaurant (Dunkin Donuts) with a drive-through window and carry out in combination with an existing fuel service station be and is hereby GRANTED, subject to the following restrictions which are conditions precedent to the relief granted herein:

1. Petitioners may apply for their building permit and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until the 30-day appeal period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief granted herein shall be rescinded.
2. Development of this property must comply with the Forest Conservation Regulations (Sections 33-6-101 through 33-6-122 of the Baltimore County Code). Petitioners are to contact Environmental Impact Review to discuss the proposed work and how these regulations may apply.

1. A field inspection and internal review by the State Highway Administration (SHA) reveals that existing access points onto U.S. Route 40 (Pulaski Highway) must be upgraded to be compliant with current State Highway Administration guidelines. Consistent with the SHA's ZAC comment, Petitioners shall contact the SHA in order to obtain an entrance permit. In particular, Petitioners can contact Michael Bailey at (410) 545-5593 or 1-800-876-4742 (ext. 5593) or email him at [mbailey@sha.state.md.us](mailto:mbailey@sha.state.md.us).

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

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SIGNED  
THOMAS H. BOSTWICK  
Deputy Zoning Commissioner  
for Baltimore County

THB:pz